

[REDACTED],
Complainant,

v.

SOUTHWEST AUTO SALES,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following Notice of Finding with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred. 910 IAC 1-3-2(b)

On June 18, 2010, [REDACTED] ("Complainant") filed a complaint with the Commission against Southwest Auto Sales ("Respondent") alleging sex (female) discrimination in violation of [REDACTED] and the Indiana Civil Rights Law (IC 22-9, et seq.). Complainant is an employee and Respondent is an employer as those terms are defined by the Civil Rights Law. IC 22-9-1-3(h) and (i). Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated because she refused to engage in sexual relations with a superior. In order to prevail on such a claim, Complainant must show that: (1) she was propositioned by a superior, (2) she refused such advances and (3) Respondent terminated her employment.

It is undisputed that Complainant and her superior, Randy Olry, at one time had a romantic relationship and that this relationship ended. Complainant claims that Mr. Olry told her not to return to work when he learned that she was dating another man. While Respondent denies that Mr. Olry stated this, Complainant did not return to work as she was scheduled the following Monday. She was therefore terminated for not reporting to work. At this time, Complainant asked to speak with Respondent's owner about Mr. Olry, but no such meeting occurred. The Commission's efforts to obtain the alleged text messages from Complainant or Respondent's telephone carrier were unsuccessful, as the third party asserts that it does not retain such messages in the normal course of business. Therefore, the credibility of the parties should be judged by the Administrative Law Judge. The fact that Complainant had been involved in a romantic relationship with her superior and that she failed to come to work as she normally had is sufficient to establish probable cause to believe that Respondent may have violated the Indiana Civil Rights Law, as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Indiana Civil Rights Commission will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

October 5, 2011
Date

Joshua S. Brewster, Esq.,
Deputy Director
Indiana Civil Rights Commission